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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,244	10/31/2003	Therese A. Weiss-Lohrei		2412

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EXAMINER

MAYO, TARA L

ART UNIT PAPER NUMBER

3671

DATE MAILED: 08/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,244

Applicant(s)

WEISS-LOHREI, THERESE A.

Examiner

Tara L. Mayo

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-14 and 16-18 is/are rejected.
- 7) ☒ Claim(s) 3,4,15,19 and 20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20031031.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: minor typographical error. In paragraph [0009] on line 3, change "5,560,800" to --6,560,800--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritchie, Jr. et al. (U.S. Patent No. 4,506,396).

Ritchie, Jr. et al. 396, as seen in Figures 1 through 6, show a maternity pillow assembly comprising:
with regard to claim 1,

a first pillow member (10) having a sloped portion at a first end (as seen in Figure 6) thereof and a thick portion at an opposing second end (as seen to include element 22);

a second pillow (12) member having a sloped portion at a first end (the opposing end of that seen in Figure 6) thereof and a thick portion at an opposing second end (as seen to include element 24); and

a connecting member (14 and 16) interconnecting the first and second pillows to maintain a predetermined spacing between said pillow members;
with regard to claim 10,

wherein said connecting member is detachably connected to said second pillow member, said connecting member being formed with a plurality of strips of hook and loop fastener portions (2) arranged in a spaced apart configuration to permit engagement of a selected one of said hook and loop fastener portions with a mating hook and loop fastener portion affixed to said second pillow member to provide an adjustable transverse spacing between the pillow members; and
with regard to claim 11,

each said pillow member being formed in an asymmetrical configuration with a sloped portion at a first end and a thick portion at an opposing second end.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie, Jr. et al. (U.S. Patent No. 4,506,396) in view of Sandler (U.S. Patent No. 4,748,702).

Ritchie, Jr. et al. '396 disclose all of the features of the claimed invention with the exception(s):

with regard to claim 2,

each pillow member including a removable case, the connecting member being connected to the first case.

Sandler '702 discloses a pillow design comprising a contoured pillow member (10) and expressly teaches the use of a removable pillow-case (37) for covering the pillow member.

With regard to claim 2, it would have been obvious to one having ordinary skill in the art of pillows at the time of invention to modify the device shown by Ritchie, Jr. et al. '396 such that it would include a removable case as taught by Sandler '702 with the connecting member connected to the first case. The motivation would have been provide a covering for the assembly capable of being removed when soiled.

6. Claims 5, 6, 9, 12, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie, Jr. et al. (U.S. Patent No. 4,506,396) in view of Dine et al. (U.S. Patent No. 2,314,080).

Ritchie, Jr. et al. '396 further disclose:

with regard to claims 9, 12 and 13,

wherein the thick portion extends from the opposing second end to the first end with the sloped portion being located between the thick portion and an interior edge of the pillow member.

Ritchie, Jr. et al. '396 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claims 5, 9 and 12,

the sloped portions being formed in a tier configuration having increasing thickness with a first tier adjacent an interior edge of the pillow member having the least thickness; and with regard to claims 6 and 16,

the tier configuration being formed through a quilting process interengaging an upper surface of the pillow member and an opposing lower surface of the pillow member.

Dine et al. '080, as seen in Figures 1 through 4, show an anatomical support device (10) formed in a tier configuration having increasing thickness with a first tier adjacent an interior edge (16) of the support having the least thickness, wherein the tier configuration is formed by threads (34) interengaging upper and lower surfaces (22 and 20, respectively) of the support and is used to maintain the case (12) and the filling material (14) in fixed relation (col. 2, lines 7 through 10).

With regard to claims 5, 6, 9, 12 and 16, it would have been obvious to one having ordinary skill in the art of pillows at the time of invention to modify the assembly shown by Ritchie, Jr. et al. '396 such that it would include the tier configuration shown by Dine et al. '080. The motivation would have been to maintain desired volumes of fill material in specific portions of the pillow member.

With regard to claims 6 and 16, the method of forming the device (i.e., "a quilting process") is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

7. Claims 7, 8, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie, Jr. et al. (U.S. Patent No. 4,506,396) in view of Dine et al. (U.S. Patent No. 2,314,080) as applied to claims 5 and 12 above, and further in view of Kelly (U.S. Patent No. 6,052,848A).

Ritchie, Jr. et al. '396 as modified above by Dine et al. '080 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claims 7 and 17,

internal baffles interconnecting the upper and lower surfaces of the pillow member; and
with regard to claims 8 and 18,

Art Unit: 3671

the baffles being arranged in order of increasing height from the interior edge of the pillow.

Kelly '848, as seen in Figures 12 and 13, shows a pillow (10) and expressly teaches the use of internal baffles (26) for dividing the interior into compartments (23, 24, 25; col. 4, lines 38 through 41).

With regard to claims 7, 8, 17 and 18, it would have been obvious to one having ordinary skill in the art of pillows at the time of invention to further modify the device shown by the combination of Ritchie, Jr. et al. '396 and Dine et al. '080 such that it would further include baffles as taught by Kelly '848. The motivation would have been to prevent bunching of the filler material. Furthermore, the baffles would necessarily increase in height from the interior edge of the pillow to accommodate the sloped portions.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie, Jr. et al. (U.S. Patent No. 4,506,396) in view of Dine et al. (U.S. Patent No. 2,314,080) as applied to claim 13 above, and further in view of Sandler (U.S. Patent No. 4,748,702).

Ritchie, Jr. et al. '396 as modified above by Dine et al. '080 disclose all of the features of the claimed invention with the exception(s) of:
with regard to claim 14,

each pillow member including a covering case, the first pillow member covering case being connected to the connecting member, and the first pillow member being received within the first covering case.

Sandler '702 discloses a pillow design comprising a contoured pillow member (10) and expressly teaches the use of a removable pillow-case (37) for covering the pillow member.

With regard to claim 14, it would have been obvious to one having ordinary skill in the art of pillows at the time of invention to modify the device shown by the combination of Ritchie, Jr. et al. '396 and Dine et al. '080 such that it would include a removable case as taught by Sandler '702 with the connecting member connected to the first case. The motivation would have been provide a covering for the assembly capable of being removed when soiled.

Allowable Subject Matter

9. Claims 3, 4, 15, 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TLM

02 August 2004



ROBERT E. PEZZUTO
PRIMARY EXAMINER